COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RE: INVESTIGATION REGARDING SERVICE QUALITY GUIDELINES ESTABLISHED IN DTE 99-84 **DTE 04-116**

REPLY COMMENTS OF THE UTILITY WORKERS UNION OF AMERICA AND UWUA LOCALS 273, 369 AND 654

I. INTRODUCTION

By order dated December 13, 2004, the Department of Telecommunications and Energy ("Department") opened an investigation into the service quality ("SQ") guidelines first established in docket DTE 99-84. Initial comments were due for filing on March 1, 2005, and replies are due April 5, 2005. The Utility Workers Union of America ("UWUA") and three of its Massachusetts locals (Local 273/Bay State Gas, Local 369/NSTAR, Local 654/NGRID) filed initial comments and now offer their reply comments.

After reviewing the initial comments filed by other parties, UWUA's highest priority recommendations remain as follows[1]:

- **The Department should review service quality much more rigorously.**
- **The Department must adopt and enforce staffing level benchmarks.**
- **The Department should adopt non-punitive inspection and maintenance (I&M) guidelines for utilities**.

UWUA replies here to comments of other parties on odor calls and offsets, staffing levels, customer service guarantees, and line losses.

[1] For UWUA's more detailed recommendations, see Initial Comments, pp. 1-2, 4-5.

ODOR CALLS AND OFFSETS

Several companies acknowledge that the current standard of responding to 95% of odor calls within one hour is readily obtainable and in fact routinely exceeded by gas companies, but they then argue that the Department should not increase the standard.[2] However, these same companies also argue that the Department should continue to allow offsets of above-standard performance in some areas against sub-standard performance in other areas.[3] They argue that offsets provide companies with an incentive to make extra investments that will lead to exceptional performance.

But at the present time companies are easily exceeding the odor call response measure. Based on the SQ reports filed to date, companies would readily meet or exceed a benchmark of responding to 97% of odor calls in one hour or less[4] but have not identified any additional investments they have made to achieve such good results. With a standard of 95%, companies have access to "free money" because the standard is so easy to meet, and above-standard results can be used to offset penalties that would apply in other performance areas. The companies pose the theory that allowing offsets creates incentives to make additional investments that lead to superior performance; the reality is that with regard to odor calls the companies do not need to make any special effort to exceed the standard and should not be rewarded with offsets.

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[2] The companies use very similar wording in making this argument. Compare KeySpan Initial Comments, p. 11, ¶1 with NSTAR Initial Comments, p. 16, ¶1, which are virtually word-for-word identical.

[3] See, e.g., KeySpan Initial Comments, pp. 4ff and NSTAR Initial Comments, pp. 6ff, which are again very similarly worded.

[4] See UWUA Initial Comments, p. 7.

In its Initial Comments, p. 7, UWUA recommended that the Department raise the benchmark for responding to odor calls, and it continues to so recommend. UWUA also recommends that offsets not be allowed, for the reasons noted in its Initial Comments.

II. THE DEPARTMENT MUST IMPLEMENT AND ENFORCE STAFFING LEVELS

Almost all of the parties that have commented on staffing levels cite to G.L. ch. 164, § 1E (a), to § 1E (b), or to both. In these reply comments, UWUA notes that these are two distinct provisions. Some of the companies focus on § 1E(b), thereby ignoring or eviscerating the plain meaning of § 1E(a). Section 1E(a) clearly mandates that the Department adopt staffing level benchmarks, and stands apart from the provisions of § 1E(b) as to how high to set the benchmark as well as the conditions under which a company can reduce staffing levels:

> . . . [T]he department shall establish service quality standards for each distribution, transmission and gas company, including, but not limited to, standards for customer satisfaction [,] service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, and public safety, **provided, however, that such service quality standards shall include benchmarks for employee staff levels and employee training programs for each distribution, transmission and gas company.**
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> G. L. ch. 164, § 1E (a).

Section 1E can only be read to require the Department to set "benchmarks for employee staff levels and employee training programs for each distribution, transmission and gas company," an absolute mandate that is completely independent of the provisions of § 1E(b).

Focusing on this critical language in § 1E(a), the comments of several companies reflect a serious misreading of the law. NSTAR at least seems to acknowledge "the Department's current system of monitoring staffing and service-quality levels fulfills the statutory mandate set forth in G.L. c. 164, § 1E(a)" because, *inter alia*, that system sets a "benchmark staffing level as of

November 1, 1997." UWUA agrees with NSTAR that the Department should be setting firm and ascertainable benchmark staffing levels based on November 1, 1997 levels. But companies have not been required to comply with this asserted benchmark. Bay State, to choose one company, has cut its staffing level well below the purported benchmark, without any consequence. At year-end 1997, its staffing level was 920, but by 2003 the staff was down to 592, a decline of almost 36%. The Department has never inquired whether such cuts are "part of a collective bargaining agreement" or required Bay state to prove that these cuts do not "adversely disrupt service quality standards," the two conditions under § 1E(b) where staffing cuts below benchmark levels may be allowed. It is hard to know what setting benchmark staffing levels means if a company can cut its staffing 36% below 1997 levels without any action or mention by the Department. The problem is not any failure of the companies to report their staffing levels, but rather the failure of the Department to either enforce 1997 levels as the benchmark, or follow the routes allowed under § 1E(b) to approve staffing cuts that are consistent with collective bargaining agreements[5] or that the company proves do not affect service quality.

Some of the companies argue that there is no need to adopt or enforce benchmark staffing levels so long as the company does not violate the other existing service quality standards.[6] But this approach is not allowed under G. L. ch. 164, § 1E(a). The Department does not have the

[5] UWUA Local 273 notes that the staffing level cuts described above are not consistent with its collective bargaining agreement with Bay State.

[6] See, for example, WMECo Comments, p. 6 (" . . . the inclusion of staffing levels in future SQ guidelines is unwarranted"); NSTAR Comments, p. 23 (" . . . it is not reasonable to establish staffing level reductions as the trigger for an investigation into the impact of those [service quality] reductions").

authority to ignore Section 1E(a) simply because the companies argue that the legal mandate to adopt and enforce staffing benchmarks is contrary to their preferred management approach. An agency cannot ignore or lend its own interpretation to a statute that is unambiguous and employs plain language. *RCN-BecoCom LLC v. Comm'r of Revenue*, 443 Mass. 198, 206-207 (2005); *Leopoldstadt, Inc. v. Comm'r of Division of Health Care Finance & Policy*, 436 Mass. 80, 91 (2002) ("we have overruled an agency's interpretation when it is contrary to the plain language of the statute"). The Department has no discretion to drop the staffing level benchmark from the overall system of service quality standards, despite the arguments of the companies that this would be good policy.

Moreover, the companies' arguments are not good policy, when read in light of the policies incorporated into the Restructuring Act, St. 1997, ch. 164. The companies would in effect shift the burden of proof to parties who believe that staffing cuts <u>have</u> affected service quality, unless the company in question has also violated other service quality standards. That is, they argue that the real trigger for any company-specific service quality investigation should be the failure to meet the non-staffing level standards, such as answering phones promptly or on-cycle meter reads, not the failure to meet benchmark staffing levels. The companies, however, ignore the fact that the legislature has squarely placed the burden on the companies themselves to demonstrate that a decline in staffing will not cause a decline in service quality. G. L. ch. 164, § 1E(b). The companies further ignore the fact that the existing, defined list of service quality standards does not measure all of the important service quality issues. For example, there have been several recent stray voltage incidents that have resulted in death or injury to household pets, yet none of these incidents, singly or in the aggregate, necessarily violates any of the existing service quality standards. Yet it is possible that cuts in staffing levels have affected the ability of companies to inspect for and address stray voltage problems.

The legislature has mandated that the Department adopt staffing level benchmarks and has placed the burden on the companies of proving that any cut in benchmark staffing levels will not harm service quality. The legislature has determined that cuts in staffing levels <u>are</u> an important trigger for further investigation and monitoring by the Department, even if those staffing level cutbacks do not immediately lead to declines in the other established service quality benchmarks. The Department has no discretion to vary from these legislative mandates.

III. CUSTOMER SERVICE GUARANTEES

Unlike most of the other companies, NSTAR "does not currently make payment of the $25 customer service guarantee for missed appointments and planned outages unless by customer request." NSTAR Comments, p. 32. However, the "Company has no objection" to making these payments automatically if it is allowed enough time to make the necessary system changes. *Id.* Since most of the other companies already make these payments without a customer so requesting, NSTAR should be required to do so as well.

IV. LINE LOSSES AND UNACCOUNTED FOR GAS

Some of the electric companies, like NSTAR, argue that line losses "are generally unrelated to the utility's service-quality performance." NSTAR Comments, p. 40. But line losses directly result in higher distribution prices for consumers because fixed costs will be spread over a smaller sales base as line losses increase. Further, while these companies assert that variations in line losses arise from factors solely outside of the companies' control, these assertions have never been tested through any investigation by the Department or by discovery by parties, as the Department has never allowed for outside parties to file discovery in the SQ dockets. NSTAR's reports, to choose one example, clearly show an increasing rate of line losses, from 5.7% in the years 1996 through 1998, to 7% in 2001 and 2002, and most recently to 7.5% in 2003.[7] Further, NSTAR's 2003 line losses are more than 50% higher than the 4.79% line losses reported by MECo.[8] The Department should do more than blindly accept the assertion of companies that a trend of worsening line losses can be safely ignored as the result of factors outside of the companies' control. Instead, the Department should investigate the underlying causes, particularly because any increase in line losses translates into an increase in distribution rates.[9]

V. INSPECTION AND MAINTENANCE GUIDELINES

UWUA reiterates its concern that neither the existing list of service quality standards (e.g., telephone response; response to odor calls; on-cycle meter readings; etc.) nor any revised list of such standards will minimize service quality problems that customers experience. The current system at best penalizes a company after the fact if the company's service quality in the areas currently being measured declines. There are several flaws with the current system. First, because the standards must only be met annually, a company can fail to meet the requirement for

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[7] See BECo's SQ report filed in DTE 04-15, App. 4.

[8] See MECo's SQ report filed in DTE 04-22, Section 1, page 2 of 2.

[9] UWUA again notes that it strongly recommends much more thorough investigation of service quality and SQ reports by the Department, including offering interested parties the right to file relevant discovery.

months on end, so long as the year-end average numbers are adequate.[10] Second, sub-standard performance in one area, even if repeated year after year, can be offset by performance above the benchmark standard in other areas. In fact, several companies offset sub-standard performance in 2003 in this manner. Third, any finite list of benchmarks will not capture all of the areas of concern to consumers, as the recent stray voltage incidents illustrate. Fourth, any after-the-fact penalties imposed are minuscule compared to the harm suffered by the affected customers, with penalties generally amounting to a few pennies per customer.

UWUA continues to urge the Department to adopt a non-penalty scheme of required inspection and maintenance guidelines, as detailed in its initial comments.

V. CONCLUSION

The Utility Workers Union of America and its Massachusetts Locals 273, 369 and 654 ask the Department to adopt changes to the rules and procedures governing service quality standards and reports, as recommended in their initial and reply comments.

Respectfully submitted,
Utility Workers Union of America

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[10] This problem was clearly illustrated by Bay State's telephone response, which was substantially sub-par for five months in 2003. See UWUA Initial Comments, p. 10. New Hampshire regulators, who track performance monthly, repeatedly fined Bay State's New Hampshire affiliate for this poor performance. By contrast, the Department imposed no sanction.